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17 Attorneys for Defendant
18 HOME DEPOT U.S.A., INC.

19 UNITED STATES DISTRICT COURT
20 NORTHERN DISTRICT OF CALIFORNIA
21 SAN FRANCISCO DIVISION

22 B&O MANUFACTURING, INC.,

23 Plaintiff,

24 v.

25 HOME DEPOT U.S.A., INC.,

26 Defendant.

CASE NO. C07 02864 JSW

**DECLARATION OF CHRISTOPHER T.
GIOVINAZZO**

27 Pursuant to 28 U.S.C. § 1746, I, Christopher T. Giovinazzo, hereby declare as follows:

28 1.

This Declaration is based on my own personal knowledge. I am an attorney in good standing licensed in the State of Georgia. I am over the age of 18 years and am competent to

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DECLARATION OF CHRISTOPHER T. GIOVINAZZO

1 testify regarding the following matters.

2 2.

3 I am an associate at the law firm of Bondurant, Mixson & Elmore, LLP representing
4 Defendant Home Depot U.S.A., Inc., in this matter. I have been admitted to this Court *pro hac*
5 *vice*.

6 3.

7 On July 25, 2007, Home Depot U.S.A., Inc. ("Home Depot") sent B&O Manufacturing,
8 Inc. ("B&O") a letter entitled "Notice of Termination of Expense Buying Agreement Dated April
9 1, 2006." A true and correct copy of that letter is attached as Exhibit A.

10 4.

11 On July 26, 2007, Paul Rice, counsel for B&O, emailed me and spoke to me by telephone
12 with respect to Home Depot's Notice of Termination of the Expense Buying Agreement ("EBA").
13 In these communications, Mr. Rice proposed that B&O and Home Depot mediate (1) whether the
14 EBA grants Home Depot the right to terminate the EBA with 60 days notice; and (2) whether
15 Home Depot complied with the EBA's volume purchasing requirement. A true and correct copy
16 of Mr. Rice's July 26, 2007 email is attached as Exhibit B.

17 5.

18 On August 3, 2007, B&O filed its Second Amended Complaint in this matter. The Second
19 Amended Complaint added two claims under the EBA that did not appear in the First Amended
20 Complaint, asserting that (1) Home Depot wrongfully terminated the EBA (Count Four), and that
21 (2) Home Depot breached the EBA's volume purchasing requirement (Count Five).

22 6.

23 On August 17, 2007, Home Depot filed its Second Motion to Dismiss, arguing in part that
24

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27 **DECLARATION OF CHRISTOPHER T. GIOVINAZZO**

1 Counts Four and Five should be dismissed because B&O failed to satisfy the EBA's mediation
2 requirement prior to raising these claims in litigation.

3 7.

4 On September 10, 2007, Mr. Rice emailed me to again request that B&O and Home Depot
5 mediate the parties' disputes under the EBA. A true and correct copy of that email is attached as
6 Exhibit C.

7 8.

8 On September 19, 2007, I sent Mr. Rice a letter responding to his request for mediation. A
9 true and correct copy of that letter is attached as Exhibit D.

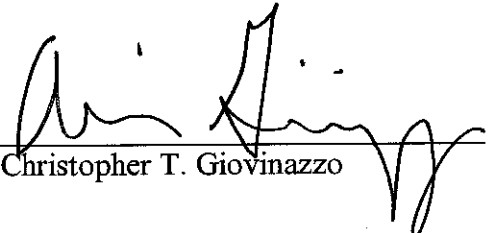
10 9.

11 On September 27, 2007, Mr. Rice responded by email to my September 19, 2007 letter. A
12 true and correct copy of that letter is attached as Exhibit E.

13 10.

14 I am not aware of any other written correspondence between Home Depot and B&O
15 concerning mediation of disputes arising under the EBA.

16
17 This 11th day of October, 2007.

18
19
20
21 
22 Christopher T. Giovinazzo